

FILED

DISTRICT COURT OF GUAM

JUN 11 2007

MARY L.M. MORAN
CLERK OF COURT

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TOUSLEY BRAIN STEPHENS PLLC
Kim D. Stephens, P.S., *Pro Hac Vice*
Nancy A. Pacharzina, *Pro Hac Vice*
1700 Seventh Avenue, Suite 2200
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206.682.5600

Attorneys for Plaintiffs Mary Grace Simpao, Christina Naputi and Janet Cruz

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

JULIE BABAUTA SANTOS, *et al.*,

Petitioners,

v.

FELIX P. CAMACHO, *et al.*,

Respondents,

CASE NO. CV04-00006

DECLARATION OF KIM D. STEPHENS
IN SUPPORT OF SIMPAO PLAINTIFFS'
APPLICATION FOR ATTORNEYS' FEES
AND COSTS

CHARMAINE R. TORRES, *et al.*,

Plaintiffs,

v.

GOVERNMENT OF GUAM, *et al.*,

Defendant.

CASE NO. CV04-00038

ORIGINAL

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'
FEES AND COSTS - 1

Case 1:04-cv-00006

Document 418

Filed 06/11/2007

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1 MARY GRACE SIMPAO, *et al.*,

CASE NO. CV04-00049

2
3 Plaintiffs,

4 v.

5 GOVERNMENT OF GUAM,

6 Defendant.

7 I, Kim D. Stephens, declare as follows:

8 1. I am the managing member of Tousley Brain Stephens PLLC, counsel for class
9 representatives Simpao, Naputi and Cruz. I submit this Declaration in support of my firm's and
10 Plaintiffs' application for an award of attorneys' fees for services rendered in the
11 above-captioned matter, and for reimbursement of expenses reasonably incurred in connection
12 with this litigation.

13 2. Tousley Brain Stephens is a Seattle, Washington law firm with a national
14 litigation practice focused on complex civil and commercial litigation emphasizing securities,
15 financial, environmental, product liability, consumer, and real estate matters.

16 3. I am the lead attorney from Tousley Brain Stephens in this case, and I am one of
17 the firm's senior litigators. I received my law degree, with honors, in 1981 from the University
18 of Washington School of Law. I served as a judicial extern clerk for the Honorable Eugene A.
19 Wright, Ninth Circuit Court of Appeals. After that clerkship, I joined Haggard, Tousley &
20 Brain, predecessor to Tousley Brain Stephens. I concentrate my practice in complex
21 commercial litigation with special emphasis on consumer, securities, financial, construction
22 products, and business law matters. I have been appointed special attorney general to handle
23 cases for the state of Washington, lead counsel to manage both state and federal class actions,
24 and have extensive experience litigating multiple plaintiff and class action cases involving tax,
25 securities fraud, environmental issues, products liability, and consumer fraud issues in state and
26 federal courts.

1 4. I have been appointed lead and co-lead class counsel by numerous state and
2 federal courts. For example, I acted as co-lead class counsel for Tousley Brain Stephens in the
3 *Richison v. American Cemwood Corp.* litigation related to defective shingles which created a
4 guaranteed \$105 million settlement fund in the first phase of the litigation. The second phase
5 of the litigation against Cemwood's insurers created an additional \$83 million settlement fund
6 in 2003. I acted as co-lead class counsel for Tousley Brain Stephens in the *Behr Wood Sealants*
7 settlement, which in 2003 created a settlement fund of up to \$107.5 million plus attorneys' fees
8 to compensate homeowners on a claims-made basis. I acted as co-lead class counsel for
9 Tousley Brain Stephens in *Delay et al. v. Hurd Millwork Co.*, representing a western states
10 class of individuals that purchased windows allegedly filled with inert gas which we
11 successfully settled. I acted as lead class counsel for Tousley Brain Stephens in *Barrett v.*
12 *PABCO*, a national roofing shingles products liability case which was settled on an unlimited
13 claims-made basis and approved in King County Superior Court in 2006. The settlement more
14 than doubled the value of compensation available to homeowners under a Washington State
15 Attorney General Consent decree, and opened claims to every qualified homeowner in the
16 nation, including those who were not the original purchasers. I acted as lead class counsel for
17 Tousley Brain Stephens in *Johnson v. Amgen Boulder, Inc., et al.*, where I was appointed to
18 represent a national securities fraud class that invested approximately \$50 million to fund the
19 development of a genetically engineered molecule with the world's largest biotechnology
20 company. That case settled for payments totaling up to \$82 million. I acted as lead class
21 counsel for Tousley Brain Stephens in *Wolf et al. v. Asiamerica et al.*, a securities fraud action
22 against an international leveraged buy-out corporation that settled for approximately 120% of
23 the class' investment, plus attorneys' fees and costs. I acted as lead class counsel for Tousley
24 Brain Stephens in *Nelson v. Appleway Chevrolet, Inc., et al.*, in which the Washington State
25 Supreme Court held AutoNation's practice of charging consumers B&O tax to be illegal.
26

1 Consumers throughout Washington State will receive refunds for 100% of their tax payments
2 and credits of 110% of their tax payments in certain transactions.

3 5. Tousley Brain Stephens and I have been appointed co-lead counsel in numerous
4 other class cases. For example, Tousley Brain Stephens was appointed co-lead counsel in the
5 *In re Louisiana-Pacific Inner Seal Siding* class action which, with initial funding of
6 \$275 million, was one of the largest product liability class action settlements in the United
7 States. In November 1998, this settlement was augmented by additional commitments of up to
8 \$500 million. Tousley Brain Stephens was also co-lead counsel in the product liability class
9 action against Weyerhaeuser Company in San Francisco Superior Court, *Williams et al. v.*
10 *Weyerhaeuser Company*, which settled on a "claims made" basis which Weyerhaeuser values
11 at approximately \$85 million. Currently, Tousley Brain Stephens serves as lead or co-lead
12 counsel in many other consumer class fraud cases including *Odom v. Microsoft et al.* in King
13 County Superior Court; *Trimble et al. v. Holmes Harbor Sewer District et al.*, an Island County
14 Superior Court case which certified for trial a class of over 300 investors misled by an illegal
15 \$20 million bond issue; and a wage and hour employment case in *Barnett et al. v. Wal-Mart*
16 *Stores, Inc.*, a King County Superior Court case, among many others.

17 6. Nancy Pacharzina recently became a member of Tousley Brain Stephens. She
18 was an associate for the firm during the majority of the time she worked on this case. She
19 concentrates her practice on complex civil litigation involving environmental, consumer
20 protection, and discrimination issues. She graduated *Order of the Coif* from the University of
21 Washington School of Law and served as a clerk for the Honorable Richard M. Bilby of the
22 U.S. District Court for the District of Arizona. An environmental engineer prior to graduating
23 from the University of Washington Law School, Ms. Pacharzina has extensive experience
24 litigating class actions and plays a key role in the firm's class action practice. She represented
25 clients in a wide variety of class actions, including wage and hour, securities fraud, product
26 defect, and consumer fraud issues. Ms. Pacharzina has successfully briefed and argued cases

1 before state and federal courts, the Washington State Court of Appeals, and Washington State
2 Supreme Court.

3 7. Tousley Brain Stephens has been involved in the investigation, prosecution, and
4 settlement of this litigation from its inception to the present. As co-lead counsel, we played a
5 key role in the case, performing substantial work on behalf of Plaintiffs and the Class. All of
6 the services performed by our firm were reasonably necessary. Our work included the
7 following:

- 8 • Objecting and moving to intervene in the original proposed *Santos* settlement;
- 9 • Drafting pleadings and filing a separate action when the motion to intervene in *Santos*
10 was denied;
- 11 • Drafting trial court motions and other court filings, and arguing those motions before
12 the court, including successfully defending against the Government of Guam's motion
13 to dismiss, and successfully bringing a partial summary judgment motion;
- 14 • Moving for class certification;
- 15 • Briefing the potential problems with the proposed class settlement filed both at the
16 Order of the Court and on our own initiative;
- 17 • Interviewing fact witnesses;
- 18 • Retaining experts to analyze the potential liability of the Government of Guam;
- 19 • Researching and analyzing Guam law and legislative history relating to the Earned
20 Income Tax Credit and other issues (jurisdiction, etc.);
- 21 • Analyzing and formulating strategy to meet the Government of Guam's challenges;
- 22 • Gathering, obtaining and analyzing evidence to prove losses suffered by the Class;
- 23 • Participating in hearings in Guam, traveling from Seattle, Washington in order to be
24 present;
- 25 • Participating in mediation held in Guam, traveling from Seattle, Washington in order to
26 be present;

- 1 • Winning motions that overcame the Government of Guam's jurisdictional challenges
- 2 and obtaining a ruling that Guam is required to pay the Earned Income Tax Credit
- 3 (hereinafter referred to as "EITC"), thereby establishing two fundamental issues in a
- 4 manner favorable to the entire class;
- 5 • Communicating with officials in the Government of Guam to determine the status of
- 6 funds available to pay EITC and the history of payment of the EITC; and
- 7 • Assembling research and developing evidence for motions and eventual trial on the
- 8 merits.

9 8. All attorneys, paralegals and document clerks at Tousley Brain Stephens are
10 instructed to maintain contemporaneous time records reflecting the time spent on this and other
11 matters. As of June 5, 2007, my firm had devoted a total of 1193 professional hours to the
12 prosecution of this case, comprised of 1099 hours of services provided by attorneys, 44 hours
13 of services provided by paralegals, and 50 hours of services provided by document clerks. The
14 names, current hourly rates, and hours incurred by each of the attorneys (including partners and
15 associates), paralegals, and document clerks, are attached hereto as Exhibit A. As shown in
16 Exhibit A, this firm's lodestar as of June 5, 2007 is \$602,648. Complete detailed time records
17 for attorneys, paralegals and document clerks are available for *in camera* review upon the
18 Court's request.

19 9. There has been no unnecessary duplication of services for which my firm now
20 seeks compensation. In those instances in which two or more attorneys participated in any
21 matter, this joint participation was necessary because of the complexity of the problems
22 involved and the time constraints that existed. I personally coordinated work flow for this case
23 to ensure that key tasks were identified and accomplished timely and efficiently. I have written
24 inefficient time off and not included it within this fee request.

25 10. As of June 5, 2007, my firm had expended a total of \$22,129.38 in unreimbursed
26 costs. These costs, which were reasonably and necessarily incurred in connection with the

1 prosecution of this litigation, are summarized on Exhibit B attached hereto. The costs were
2 incurred solely in connection with this case and are reflected on the books and records of my
3 firm, which we maintain in the course of business. Our books and records are prepared from
4 expense vouchers and contemporaneous check requests. They are an accurate record of the
5 expenses incurred in this case.

6 11. Tousley Brain Stephens represented the *Simpao* plaintiffs on a contingent basis
7 and advanced costs on their behalf. The only compensation we will receive for our legal work
8 on this case and the expenses we incurred on behalf of the *Simpao* plaintiffs will be the amount
9 awarded by the Court.

10 12. We are an 18-lawyer firm with an hourly and contingent fee practice. The
11 demands of this case on our limited resources have periodically precluded us from taking on
12 other cases.

13
14 I declare under penalty of perjury under the laws of the United States and the Territory
15 of Guam that the foregoing is true and correct.

16 Executed this 7 day of June 2007, at Seattle, Washington.

17
18 
19 KIM D. STEPHENS
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LODESTAR REPORT for Tousley Brain Stephens PLLC

Inception through June 5, 2007

NAME	LEVEL	TOTAL HOURS	HOURLY RATE	TOTAL FEES
Kim D. Stephens	Owner/member	256.8	\$750	\$192,600.00
David D. Hoff	Owner/member	16.0	\$750	\$12,000.00
Romney R. Brain	Owner/member	2.5	\$565	\$1,412.50
Nancy A. Pacharzina	Owner/member	816.2	\$465	\$379,533.00
Subtotal		1091.30		\$585,545.50
Michael J. Estok	Associate	7.8	\$310	\$2,418.00
Subtotal		7.8		\$2,418.00
Amy E. Stanton	Paralegal	7.5	\$195	\$1,462.50
Carol D. Bonifaci	Paralegal	20.1	\$255	\$5,125.50
Gayle L. Neligan	Paralegal	16.5	\$170	\$2,805.00
Subtotal		44.10		\$9,393.00
Eden B. Nordby	Document Clerk	17.4	\$105	\$1,827.00
Megan Koekemoer	Document Clerk	33.0	\$105	\$3,465.00
Subtotal		50.40		\$5,292.00
TOTAL		1193.80		<u>\$602,648.50</u>

UNREIMBURSED EXPENSES FOR TOUSLEY BRAIN STEPHENS PLLC

Inception through June 5, 2007

Reproductions	\$2,458.32
Postage	4.05
Filing Fee	200.00
Messenger	62.73
Long Distance Telephone	612.71
Computer Research	4,574.68
Travel Expense	14,059.89
CD/DVD	15.00
Miscellaneous/Advances	127.00
Miscellaneous/Expense	15.00
TOTAL	<u>\$22,129.38</u>

CERTIFICATE OF SERVICE

I, JAMES L. CANTO II, certify that I caused a copy of the foregoing document here filed to be served on the following individuals or entities on June 11, 2007, via hand delivery at the following addresses:

Counsel for Petitioner
Charmaine Torres
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Respectfully submitted this JUNE 11, 2007

SHIMIZU CANTO & FISHER
TOUSLEY BRAIN STEPHENS PLLC


James L. Canto II
Attorneys for Plaintiffs